
Program Memorandum Intermediaries/Carriers

Department of Health and
Human Services (DHHS)
Centers for Medicare &
Medicaid Services

Transmittal AB-03-120

Date: AUGUST 8, 2003

CHANGE REQUEST 2729

SUBJECT: Medicare Secondary Payer (MSP) – (1) Copy of Recovery Demand Packages Resulting From A Data Match or Non-Data Match Group Health Plan (GHP) Recovery Action to Insurers/Third Party Administrators (TPAs) of Employers; (2) Documentation Required When an Insurer/TPA Wishes to Resolve a Debt on Behalf of its Client, an Employer Debtor

The first purpose of this Program Memorandum (PM) is to notify contractors of the requirement to supply copies of all GHP-based recovery demand packages issued to employers to the employer's insurer/TPA. For purposes of this PM, the term "demand packages" includes the initial recovery demand letter and enclosures and the subsequent "intent to refer" letter and all enclosures. The second purpose is to specify the documentation required when an insurer/TPA wishes to resolve a debt on behalf of its client, an employer debtor.

All Medicare contractors currently initiate Data Match and Non-Data Match GHP-based recoveries of mistaken payments to the employer if the employer is known. In order to facilitate employer efforts to respond to demand packages, contractors must send a copy of these demand packages to the insurer/TPA of the employer debtor if the insurer/TPA is known. This PM supplements, but does not supercede or eliminate, any existing MSP recovery requirements or processes.

Contractors must:

- Send a copy of all initial and subsequent demand packages to the employer's insurer/TPA at the same time they issue the original or subsequent demand package to the employer. The copy does not need to be sent certified mail.
 - In the event the insurer/TPA is not known or the address is incomplete, the contractor should send the demand package only to the employer. Do not develop further for the insurer/TPA name or address or send Electronic Correspondence Referral System (ECRS) inquiries to the Coordination of Benefits Contractor.
 - In the event the insurer/TPA copy is returned to the contractor as "undeliverable", do not attempt to find a better address.
 - Send insurer/TPA copies to the address on the Common Working File (CWF) MSP Auxiliary File.
- Use the attached cover letter with the copy of the demand package sent to the insurer/TPA. This letter is mandatory in order to ensure consistency. This cover letter should be PC generated.

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- Maintain copies of all letters and demand packages sent to employers and insurers/TPAs within the case file.
- Respond to the appropriate individual/entity when contacted about a debt.
 - If the insurer/TPA is acting as an agent of the employer, the contractor must address correspondence to the employer with a copy to the insurer/TPA. The cover letter for the copy of the demand package sent to the insurer/TPA sets forth the documentation required when an insurer/TPA wishes to resolve a debt on behalf of its client, an employer debtor. Refer to the attachment to this PM.
 - If an insurer/TPA submits payment or an alleged valid document defense but has not submitted documentation establishing its authority to act on behalf of the employer to resolve the debt, responses should be addressed only to the employer.
- Continue existing debt referral procedures in PM AB-02-102 (Change Request 2145). The fact that the insurer/TPA receives a copy of the demand package or that the insurer/TPA may be given authority to resolve a debt on behalf of its client, an employer debtor, does not change the status of the employer as the debtor and as the entity to be referred to Treasury as the debtor.

Contractors must use extra care when evaluating defenses submitted by the insurer/TPA when the debtor is the employer. This is because a defense raised by the insurer/TPA might be valid if the insurer/TPA were being pursued with respect to the debt, but invalid as a defense for the employer. For example, the insurer might respond that it did not provide coverage during the period in question; or the TPA might respond that its contract was not in effect during the period in question. While proper documentation could establish these as defenses for the insurer or TPA they are not defenses for the employer. The employer could have provided coverage through another insurer or had a different TPA contract in effect. Where the offered defense is an issue involving the specific coverage or payment limits of the policy, this should not be an issue. For example, a defense of exhaustion of the payment limits of the policy applies equally to the employer and the TPA/insurer. Continue to evaluate alleged defenses and accompanying documentation as addressed in PM AB-02-102/Change Request 2145, Attachment 1E.

The *effective date* for this Program Memorandum (PM) is October 1, 2003.

The *implementation date* for this PM is October 1, 2003.

This PM may be discarded after October 1, 2004.

If you have any questions, contact your Regional MSP Coordinator. Regional staff may contact Tina Merritt at Tmerritt2@cms.hhs.gov with any questions.

Attachment

Attachment

Insurer/TPA Name
Insurer/TPA Address 1
Insurer/TPA Address 2
Insurer/TPA City, State, Zip

Re: Medicare Secondary Payer (MSP) Recovery Demand Letter Package and/or Intent to Refer Debt to Treasury Package to Your Client: (Name of Client)

Dear Insurer/TPA:

Enclosed is a copy of an MSP demand package that we have sent to your client: (Name of Employer). We are sending you this copy so that you are aware that Medicare has identified a debt arising under the MSP laws involving a group health plan that you either insured or administered as a TPA (per information available to Medicare) on the dates of service identified. Frequently employers expect their insurers/TPAs to resolve these matters on the employer's behalf.

If you are to act as the agent of the employer in resolving this matter, please obtain specific authorization from the employer to do so. The authorization must be on employer letterhead and must specifically authorize the Centers for Medicare & Medicaid Services, its Medicare contractors, their employees and agents, and the Department of the Treasury and its employees, contractors and agents to disclose for a period of 1 year, any and all information related to a debt identified in an MSP recovery demand letter dated (date of demand letter) from (name of entity sending demand letter) regarding the following Medicare beneficiaries (beneficiary names and Health Insurance Claims Numbers). It must also specifically authorize the insurer/TPA to resolve the identified debts on the employer's behalf. A copy of the authorization must be included in any communication to any of the named entities (to which the disclosure authorization applies) regarding this debt if you wish to be copied on the reply to the employer.

If you wish to discuss this matter, please call (contractor contact phone number).

Sincerely,

(Name of MSP Manager)

cc (without enclosure):
(Employer Name)
(Employer Address 1)
(Employer Address 2)
(Employer City, State, Zip)

